

IN THE UNITED STATES COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLYDE MCCOY,	:	CIVIL ACTION
v.	:	
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY	:	
and	:	
	:	NO. 01-5881
SEPTA TRANSIT POLICE OFFICER	:	
MARELLI	:	

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

March 1, 2002

Clyde McCoy filed a complaint against the Southeastern Pennsylvania Transportation Authority (SEPTA) and "Septa Transit Police Officer Marelli" (Marelli) in state court. Defendant SEPTA removed to federal court, filed an answer and then filed a motion for judgment on the pleadings. Upon consideration of the pleadings, judgment will be granted in favor of SEPTA.

FACTUAL BACKGROUND

McCoy alleges that three SEPTA police officers assaulted him while he was coming to the aid of a young boy. Count I of the complaint alleges respondeat superior liability for constitutional violations under 42 U.S.C. §1983. McCoy claims that SEPTA is liable because it unconstitutionally acted "through

its agents, servants, workmen and employees." Counts II and III allege state law negligence and intentional infliction of emotional distress also under respondeat superior. Count II, the negligence claim, includes an ambiguous reference to SEPTA's failure to train its employees adequately. This reference is undeveloped and there are no allegations about SEPTA's practices in support of this claim.

SEPTA contends that all counts are barred as a matter of law because liability under 42 U.S.C. §1983 cannot be based on respondeat superior but only proof of unconstitutional policy or custom. SEPTA further contends that the state law counts of negligence and infliction of emotional distress are barred by SEPTA's sovereign immunity as an agency of the Commonwealth of Pennsylvania.¹

DISCUSSION

I. STANDARD FOR JUDGMENT ON THE PLEADINGS.

Under Fed. R. Civ. P. 12(c), after the pleadings are closed

¹ McCoy claims that he has "prepared" a motion for leave to amend the complaint but no leave to amend has been sought. When a complaint is dismissed, specificity and curable defect may suggest leave to amend without leave actually being sought. Shane v. Fauver, 213 F.3d 113, 115-16 (3d Cir. 2001); District Council 47 v. Bradley, 795 F.2d 310, (3d Cir. 1986). This is not the case in granting judgment on the pleadings.

any party may move for judgment on the pleadings; the motion must be decided only on the factual assertions in the pleadings. If evidence beyond the pleadings is considered, the motion must be converted to a Rule 56 Motion for Summary Judgment. Here, however, SEPTA's motion alleges no evidence outside the formal pleadings.

All of the well pleaded factual allegations in the nonmovant's pleadings are taken to be true and inferences are evaluated in the light most favorable to the nonmovant. Hayes v. Community General Osteopathic Hospital, 940 F.2d 54, 56 (3d Cir. 1991); Jablonski v. Pan American World Airways, Inc., 853 F.2d 289, 290-91 (3d Cir. 1988). The Motion for Judgment on the Pleadings will be granted only if there are no allegations of fact in McCoy's pleadings that, if proven, would allow recovery.

II. THE §1983 CLAIM.

A local or municipal governing body may be sued directly under 42 U.S.C. §1983 but cannot be held liable under respondeat superior or any other vicarious liability doctrine. Monell v. Dep't of Soc. Serv., 436 U.S. 658, 691-94 (1978); Davis v. SEPTA, 2001 WL 1632142, 8 (E.D. Pa. 2001) (finding SEPTA a governmental unit subject to suit under §1983 but not subject to respondeat superior liability). The governmental agency is liable, only for an unconstitutional policy, custom or practice. Id. McCoy

alleges only that SEPTA is liable for the civil rights violations of its police officers, under respondeat superior. McCoy fails to allege that the SEPTA police officers followed an unconstitutional SEPTA custom or policy.

Policy or custom may be inferred from "informal acts or omissions of supervisory municipal officials." Colburn v. Upper Darby Twp., 838 F.2d 663, 671 (3d Cir. 1988). McCoy does not allege that the police officers in question were supervisors or policy-makers in any way. Nor does McCoy allege that SEPTA policy-makers knew of and were indifferent to an alleged violation.

McCoy has failed to establish the requisite custom, practice or policy needed to recover against SEPTA. Because no fact has been alleged by McCoy that, if proven, would entitle McCoy to judgment, SEPTA will be granted judgment on the pleadings on the §1983 claim.

III. THE STATE LAW CLAIMS.

Count II and Count III of McCoy's complaint allege that SEPTA is liable for negligence and intentional infliction of emotional distress based on the assault and battery of its employees. The Pennsylvania Sovereign Immunity Act confers state sovereign immunity on local government agencies with certain stated exceptions. 1 Pa. C.S.A. §2310. SEPTA is an agency of the

Commonwealth of Pennsylvania. Feingold v. Southeastern Pennsylvania Transportation Authority, 517 A.2d 1270 (Pa. 1986). SEPTA, a commonwealth agency, is immune except for those actions to which immunity is specifically waived. In re Paoli Railroad Yard PCB Litigation, 916 F.2d 829, 864 (3d Cir. 1990) (finding SEPTA's authorizing statute contained attributes of "an agency of the Commonwealth" protected by sovereign immunity); Clark v. SEPTA, 691 A.2d 988, 991-92 (Cmwlth. Ct. Pa. 1997); Martz v. SEPTA, 598 A.2d 580 (Cmwlth. Ct. Pa. 1991).

Pennsylvania has waived sovereign immunity for nine actions: 1) vehicle liability; 2) medical-professional liability; 3) care, custody, control of personal property; 4) real estate, highways and sidewalks; 5) potholes and other dangerous conditions; 6) care, custody or control of animals; 7) liquor store sales; 8) National Guard activities; 9) toxoids and vaccines. 42 Pa.C.S. §8522(a),(b). McCoy's claims do not invoke any of the nine exceptions and none apply. Transportation Authority negligence and intentional infliction of emotional distress are not within the statutory exceptions. See Lavin v. Tony Depaul & Son, 1995 WL 765720 (E.D.Pa. 1995); Harrison v. SEPTA, 1990 WL 124909 (E.D. Pa. 1990).

Lavin and Harrison acknowledged that state law claims, such as employee negligence, were not within the nine exceptions set forth in 42 Pa.C.S. §8522. An allegation of police abuse does

not fall within any of the exceptions to Pennsylvania sovereign immunity. Clark, 691 A.2d at 991-92. Similarly, the exceptions do not apply to an allegation of negligent failure to train SEPTA police officers adequately. Id. at 992 (citing Borosky v. Comm., 406 A.2d 256 (Cmwlth. Ct. Pa. 1979)).

Because sovereign immunity bars claims of negligence and infliction of emotional distress against SEPTA, McCoy has not alleged facts that, if proven, would allow him to prevail. SEPTA will be granted judgment on the pleadings on the negligence and infliction of emotional distress claims.

IV. CONCLUSION

McCoy has not alleged facts against SEPTA in his complaint that would entitle him to recovery. Under §1983, SEPTA cannot be held liable under respondeat superior. Pendent state law claims against SEPTA for police officer negligence and intentional infliction of emotional distress are not within any exception to SEPTA's state law sovereign immunity. Therefore, SEPTA's Motion for Judgment on the Pleadings will be GRANTED.

As to the allegations concerning Marelli, Plaintiff's affidavit claims that Marelli was served "in the care of Southeastern Pennsylvania Transportation Authority, at 1234 Market Street, 5th Floor, Philadelphia, Pennsylvania, 19107." The affidavit does not claim that Marelli was personally served

and no pleading provides further address or contact information for Marelli. Entry of Appearance on both SEPTA and Marelli's behalf was made by SEPTA's counsel. In the Answer, SEPTA claims that it had no employee named "Marelli" at any time relevant to this case. Because the Motion for Judgment on the Pleadings was only on behalf of SEPTA, the court will enter judgment for SEPTA but not Marelli. A Rule to Show Cause why the action should proceed against Marelli will issue.

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and	:	
SEPTA TRANSIT POLICE OFFICER	:	NO. 01-5881
MARELLI	:	

ORDER

AND NOW, this _____ day of March, 2002, for the reasons given in the foregoing memorandum, it is **ORDERED** that:

1. SEPTA's Motion for Judgment on the Pleadings (#3) is **GRANTED**.
2. **JUDGMENT IS ENTERED** for Defendant Southeastern Pennsylvania Transportation Authority and against Plaintiff Clyde McCoy.

Norma L. Shapiro, S.J.

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ORDER

AND NOW, this _____ day of March, 2002, for the reasons given in the foregoing memorandum, it is **ORDERED** that the parties shall respond to a Rule to Show Cause, on or before (10 days) of the issuance of this order, why the action should or should not proceed against "SEPTA Transit Police Officer Marelli."

Norma L. Shapiro, S.J.